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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/672,402
Filing Date: September 29, 2003
Appellant(s): GROLLITSCH ET AL.

MAILED

NOV 27 2007

GROUP 3600

Andrew W. Chu
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 9-4-2007 (with additional corrections dated 10-15-2007) appealing from the Office action mailed 4-4-2007.

(1) Real Party of Interest

A statement identifying by name the real party of interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal involves claims 39-51.

An amendment to the claims was filed after the final rejection but has not been entered at this time. Therefore the currently pending claims involved in this appeal are claims 39-51 as presented 1-15-2007. An accurate claim appendix showing currently pending claims 39-51 is attached To this examiner's answer.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

The amendment after final rejection filed on 9-4-2007 has not been entered.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is deficient. 37 CFR 41.37(c)(1)(v) requires the summary of claimed subject matter to include: (1) a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number, and to the drawing, if any, by reference characters and (2) for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters. The brief is deficient because the summary implies that means plus function language has been used in a manner to invoke 112/6 paragraph. This is not the case while language such as "sensor means" and "first ram means" are used the recitations do not meet the 3-prong analysis requirements set forth in MPEP 2181.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: Appellant indicated claims 39-42 and 44-45 as rejected under 35 U.S.C. § 102(b) as anticipated by European Patent No. 0043170 (the '170 patent) in view of British Patent No. 2,052,765 (the '765 patent). This is incorrect. Claims 39-42 and 44-45 are rejected under 35 U.S.C. § 103(a) as being

unpatentable over European Patent No. 0043170 (the '170 patent) in view of British Patent No. 2,052,765 (the '765 patent).

Appellant's statements regarding claims 46-51 are correct.

(7) Claims Appendix

A substantially correct copy of appealed claims 43 and 46 appear on pages 14-15 of the Appendix to the appellant's brief. The minor errors are as follows: Claim 43 as been omitted as appellant attempted to cancel the claim in an after final amendment dated 9-4-2007 that was subsequently not entered. Claim 46 as listed in the appellant's claim appendix includes the language "and being placed on said conveyor such that an open side thereof faces said conveyor" in lines 4-5. This language was added in the amendment after final dated 9-4-2007, subsequently not entered, and therefore is not present in the currently pending claim on appeal. A complete listing of the currently pending claims, as submitted 1-15-2007, is included at the end of this examiners answer.

(8) Evidence Relied Upon

EP 0 043 170 A1 (Mooij) June 1, 1982

GB 2 052 765 (Auer) January 28, 1981

5,528,925

Sherapa

1-1996

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim 46-51 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 0043170 to Mooij. Mooij discloses forming a frame having a conveyor thereon (1 and p4 lines 15+; placing a plurality of cases on said conveyor, each of said plurality of cases having an open side and a closed side with a plurality of walls extending therebetween (2, 16 and p4 lines 16+); moving said plurality of cases in a direction on said conveyor (p4 lines 16+); fixing a position of one of said plurality of cases on said conveyor (p4 lines 26+); applying a force against one of said plurality of walls such that the wall deflects (p3 lines 15+; determining whether the deflection is beyond a desired amount (p3 lines 20+ and p6 lines 15+); and ejecting the case directly from said conveyor when the deflection of the wall is beyond the desired amount (p5 lines 25+).

-Re claim 47 positioning a surface of a ram against the wall of the case; and actuating said ram such that said surface of said ram urges against the wall of the case (p2 lines 9+).

-Re claim 48 sensing an amount of movement of said surface of said ram (p 6 lines 15+).

-Re claim 49 said ram having a pneumatic cylinder mounted in a fixed position, said ram having a piston extending outwardly of said cylinder, said ram having an arm pivotally connected to said piston, said step of actuating the ram comprising: retracting said piston within said cylinder such that said arm pivots outwardly, said arm

having said surface thereon urging against the wall (figure 4 and p5 lines 31+).

-Re claim 50 said step of fixing the position comprising: actuating a pneumatic ram such that a piston of the ram extends through said open side and abuts one of said plurality of walls so as to stop a movement of the case relative to said conveyor (figure 4).

-Re claim 51 applying another force against said closed side of said case, such that said closed side deflects; and determining whether the deflection of said closed side is beyond a predetermined limit (p6 lines 12+).

Claims 39-42, 44, 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mooij in view of GB 2052765 to Auer. Mooij discloses a frame (figure 1); a conveyor means mounted on said frame (18), said conveyor means for moving the case along said frame (2 figure 1); a first ram means affixed to said frame, said first ram means for applying a force onto a surface of a wall of the case (p2 lines 9+); a second ram means affixed to said frame and positioned in a different location on said frame from said first ram means, said second ram means for applying a force onto another surface of the case (figure 4), said second ram means comprising a pneumatic ram having a cylinder affixed to said frame and a piston extending outwardly of said cylinder, said piston being movable between a first position and a second position relative to said cylinder, said first position positioning said piston away from said another surface of the case, said second position urging against said another surface of the case (p6 line 12+), said piston having a curved surface positioned at an end of said piston opposite said

cylinder (31 and p6 lines 4+; a sensor means (21) cooperative with said ram means, said sensor means for detecting when the surface of the wall of the case has deflected beyond a desired amount; and an ejection means (24, p2 lines 9+, and p5 lines 25+) affixed to said frame and cooperative with said sensor means for ejecting the case directly from said conveyor means when the wall of the case has deflected beyond the desired amount. Mooij does not disclose the rejection means comprising a ram having a cylinder affixed to said frame, said pneumatic ram having a piston extending outwardly therefrom, said piston being movable between a first position and a second position relative to said cylinder, said first position causing said piston to be positioned away from the case on said conveyor means, said second position urging against the case on said conveyor means so as to separate the case from said conveyor means. Auer discloses a transfer means comprising a ram (12) having a cylinder (10) affixed to said frame, said pneumatic ram having a piston extending outwardly therefrom, said piston being movable between a first position and a second position relative to said cylinder, said first position causing said piston to be positioned away from the case on said conveyor means, said second position urging against the case on said conveyor means so as to separate the case from said conveyor means (p2 lines 13+) for the purpose of displacing an item relative to the conveyor and therefore removing it (p2 lines 18+).

It would have been obvious to one ordinary skill in the art at the time of applicant's invention to have modified Mooij to include the rejection means comprising a ram having a cylinder affixed to said frame, said pneumatic ram having a piston

extending outwardly therefrom, said piston being movable between a first position and a second position relative to said cylinder, said first position causing said piston to be positioned away from the case on said conveyor means, said second position urging against the case on said conveyor means so as to separate the case from said conveyor means, as taught by Auer, for the purpose of displacing an item relative to the conveyor and therefore removing it.

-Re claim 40 Mooij further discloses said first ram means comprising:
a pneumatic ram (figure 4) having a cylinder (28) affixed to said frame, said pneumatic ram having a piston extending outwardly therefrom; and an arm (25) pivotally connected to said piston and pivotally connected to said frame (fig 4).

-Re claim 41 Mooij discloses said piston being movable between a first position and a second position relative to said cylinder, said first position causing said arm to be positioned away from the wall of the case, said second position urging the wall of the case outwardly (fig 4, p5 lines 31+).

-Re claim 42 Mooij discloses a sensor means connected to said cylinder and cooperative with said piston, said sensor means for determining when said second position is beyond a desired limit of movement (p6 lines 15+).

-Re claim 44 Mooij discloses a positioning means (17) affixed to said frame, said positioning means for fixing a position of the case relative to said frame.

-Re claim 45 Mooij discloses a separating means (5, 1) affixed to said frame in spaced relation to said positioning means, said separating means for spacing another

case from the case on the conveyor means when said positioning means fixed the position of the case.

Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mooij in view of Auer as applied to claims 39-42, 44, 45 above, and further in view of US 5,528,925 to Sherepa. Mooij in view of Auer discloses all the limitations of the claim except the curved surface being a roller rotatably positioned at one end of said piston opposite said cylinder. Sherepa discloses the curved surface being a roller (66) rotatably positioned at one end of said piston opposite said cylinder. (66, fig 4a and 4b) for the purpose of allowing relative motion between the wheel or curved surface (66) and the container (c3 lines 62+).

It would have been obvious to one of ordinary skill in the art at the time of the applicants invention to have modified Mooij in view of Auer to include the wheel (66) as the curved surface, as taught by Sherepa, for the purpose of allowing relative motion between the wheel or curved surface (66) and the container (c3 lines 62+).

(10) Response to Argument

II. A. Appellant stated, "The invention is not anticipated by the '170 patent."

Relative to claim 46 appellants stated,

The '170 patent fails to anticipate the placement of the case on the conveyor in the orientation as described and lacks the step provided for the ejection of the crate from the conveyor once the crate fails the testing.

First of all examiner points out that the orientation of the case on the conveyor is not recited in the currently pending claim as this limitation was added in an amendment filed after final and subsequently not entered. Secondly examiner maintains that the step of ejection is present in the '170 patent, specifically at page 5 lines 25+. Mooij discloses, "depending upon a rejection signal sent forth by a process computer, the crate will be replaced by a good crate in the replacement unit indicated with 22. The replacement unit has a feed arrangement 23 for good and delivery arrangement 24 for rejected crates." Examiner maintains that this anticipates the ejection step as set forth in claim 46.

Appellant further stated,

If the crate that is being tested in the '170 patent fails the test, then the crate is simply replaced with an acceptable crate. There is no disclosure nor teaching nor suggestion of the automatic ejection of the defective crate from the conveyor as claimed in the present invention.

Examiner disagrees and maintains that the replacement unit 22 and its function anticipate the claim limitation. Specifically when a crate fails the test and a rejection signal is sent and the bad crate is replaced with a good crate. In doing so replacement unit 22 ejects the bad crate from the conveyor via delivery arrangement 24.

Appellant further stated,

Furthermore, the crates on the conveyor are not placed so that open sides face the conveyor. This orientation is a particular benefit for the present invention for crates that have not yet been filled and for examination of the bottom surface of the crate.

This argument is not commensurate with the pending claims as the subject matter discussed is not present in the claims. Therefore this argument is not relevant. Examiner reasserts that this subject matter was added in an amendment filed after final and subsequently not entered and therefore the argued limitation does not exist in the currently pending claim.

II. B. Appellant stated, "The proper version of the method claim was not considered against the '170 patent."

Examiner disagrees and maintains that the method claims 46-51 were considered and properly rejected. An amendment was filed after final and subsequently not entered leading the appellant to argue limitations that are not present in the currently pending claims. A correct listing of the currently pending claims is included at the end of this examiner's answer.

III. Appellant stated, "The invention is not made obvious by the prior art combination."

Appellant discusses the '765 reference at length and stated specifically,

There is no "ejection means" affixed to the frame of the conveyor for "ejecting the case directly from the conveyor means when the wall of the case has deflected beyond the desired amount". There is no ram that has a piston movable to a second position for "urging against the case on the conveyor means so as to separate the case from the conveyor means.

Examiner disagrees and contends that the appellant has mischaracterized the combination set forth by the examiner. In essence the appellant is arguing a single reference, in this case the '765 reference, rather than considering the combination set forth. Examiner contends that the '170 reference shows all of the features of the claim except the specifics of the ejection means. The '170 shows an ejection means (see page 5 lines 25+ as cited in the grounds of rejection) but fails to show the specific details of the ejection means. The '765 reference is relied upon for its teaching of the transfer means that removes crates from the conveyor and shows the claimed limitations of the ejection means. The combination as made by the examiner is that it would have been obvious to one of ordinary skill in the art at the time of the appellant's invention to have utilized the detailed transfer system of the '765 reference as the ejection means of the '170 reference. Therefore the '170 reference is the primary reference teaching everything but the details of the ejection means. The '765 reference is relied upon to teach the details of a specific transfer/ejection means which could readily be used with the '170 system as rejection means.

The appellant further discusses both the '765 and '170 references relative to claim 39 but never considers the references as a combination as set forth by the examiner.

Further regarding claim 39 appellant stated,

Applicant respectfully contends that the '170 patent does not make the curved surface and piston orientation of the present invention obvious. Numeral 31 is written to refer to the "wall 31" of the crate. The wall of the crate has no

relation to the piston nor the orientation of the piston. Most likely, the correct numeral is "punch 29 with rounded top 30". The "rounded top 30" is a disclosure of a curved surface. However, the orientation of the piston is still lacking.

Examiner disagrees and maintains that the '170 reference does show the claimed limitations as set forth in the grounds of rejection. Page 6 lines 1+ and figure 4 of the '170 reference clearly show the piston with a curved surface (30, 31 in figure 4) and meet the claim requirements. The '170 system readily exhibits two positions as claimed in realizing the bending test described on page 6 lines 5+.

Appellant further stated,

The '170 patent teaches against the piston of the present invention. The punch 29 of the '170 patent is mounted above the crate with an open side facing upwards. The punch 29 is a lifting mechanism with a tong and orthogonal cylinder powering the clamping action. Such an arrangement would not make common sense for the present invention.

Examiner disagrees and maintains the '170 reference does not teach against the claimed invention. The punch is not a lifting mechanism, a characterized by appellant, but rather a mechanism for loading a wall in order to perform a bending test (p6 lines 5+). The lifting mechanism is shown in figure 2 and utilizes cylinders (8-11) located below the crate. Examiner maintains that the '170 reference discloses all the details of the second ram means as currently claimed.

Appellant concluded by stating,

On the basis of the reasons stated herein, Applicant respectfully contends that the present invention is patentably distinguishable from the '170 patent and '765 patent combination.

Examiner disagrees and maintains that the claims are properly rejected under the '170 and '765 references and the rejections should be affirmed.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Mark Hageman



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Conferees:

Meredith Petravick 

Patrick Mackey 

Mark Hageman 

Corrected Claims Appendix

(currently pending claims as filed 1-15-2007)

Claims 1 - 21 (canceled). These claims were canceled by an earlier amendment.

Claims 2 - 38 (canceled). These claims are canceled by the present amendment.

39. (new) An apparatus for detecting a cracked or broken case comprising:

a frame;

a conveyor means mounted on said frame, said conveyor means for moving the case along said frame;

a first ram means affixed to said frame, said first ram means for applying a force onto a surface of a wall of the case;

a second ram means affixed to said frame and positioned in a different location on said frame from said first ram means, said second ram means for applying a force onto another surface of the case, said second ram means comprising a pneumatic ram having a cylinder affixed to said frame and a piston extending outwardly of said cylinder, said piston being movable between a first position and a second position relative to said cylinder, said first position positioning said piston away from said another surface of the case, said second position urging against said another surface of the case, said piston having a curved surface positioned at an end of said piston opposite said cylinder;

a sensor means cooperative with said ram means, said sensor means for detecting when the surface of the wall of the case has deflected beyond a desired amount; and

an ejection means affixed to said frame and cooperative with said sensor means for ejecting the case directly from said conveyor means when the wall of the case has deflected beyond the desired amount, said ejection means comprising:

a ram having a cylinder affixed to said frame, said pneumatic ram having a piston extending outwardly therefrom, said piston being movable between a first position and a second position relative to said cylinder, said first position causing said piston to be positioned away from the case on said conveyor means, said second position urging against the case on said conveyor means so as to separate the case from said conveyor means.

40. (new) The apparatus of Claim 39, said first ram means comprising:

a pneumatic ram having a cylinder affixed to said frame, said pneumatic ram having a piston extending outwardly therefrom; and an arm pivotally connected to said piston and pivotally connected to said frame.

41. (new) The apparatus of Claim 40, said piston being movable between a first position and a second position relative to said cylinder, said first position causing

said arm to be positioned away from the wall of the case, said second position urging the wall of the case outwardly.

42. (new) The apparatus of Claim 41, further comprising:

a sensor means connected to said cylinder and cooperative with said piston, said sensor means for determining when said second position is beyond a desired limit of movement.

44. (new) The apparatus of Claim 39, further comprising:

a positioning means affixed to said frame, said positioning means for fixing a position of the case relative to said frame.

45. (new) The apparatus of Claim 44, further comprising:

a separating means affixed to said frame in spaced relation to said positioning means, said separating means for spacing another case from the case on the conveyor means when said positioning means fixed the position of the case.

46. (new) A method of detecting a cracked or broken case comprising:

forming a frame having a conveyor thereon;

placing a plurality of cases on said conveyor, each of said plurality of cases having an open side and a closed side with a plurality of walls extending therebetween;

moving said plurality of cases in a direction on said conveyor;
fixing a position of one of said plurality of cases on said conveyor;
applying a force against one of said plurality of walls such that the wall
deflects;
determining whether the deflection is beyond a desired amount; and
ejecting the case directly from said conveyor when the deflection of the
wall is beyond the desired amount.

47. (new) The method of Claim 46, said step of applying the force comprising:

positioning a surface of a ram against the wall of the case; and
actuating said ram such that said surface of said ram urges against the
wall of the case.

48. (new) The method of Claim 47, said step of determining comprising:

sensing an amount of movement of said surface of said ram.

49. (new) The method of Claim 48, said ram having a pneumatic cylinder
mounted in a fixed position, said ram having a piston extending outwardly of said
cylinder, said ram having an arm pivotally connected to said piston, said step of
actuating the ram comprising:

retracting said piston within said cylinder such that said arm pivots
outwardly, said arm having said surface thereon urging against the wall.

50. (new) The method of Claim 46, said step of fixing the position comprising:

actuating a pneumatic ram such that a piston of the ram extends through said open side and abuts one of said plurality of walls so as to stop a movement of the case relative to said conveyor.

51. (new) The method of Claim 46, further comprising:

applying another force against said closed side of said case, such that said closed side deflects; and

determining whether the deflection of said closed side is beyond a predetermined limit.